

House Bill 1093 (AS PASSED HOUSE AND SENATE)

By: Representatives Willard of the 49<sup>th</sup>, Mills of the 25<sup>th</sup>, Coan of the 101<sup>st</sup>, Fleming of the 117<sup>th</sup>, O'Neal of the 146<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

To amend Code Section 44-14-3 of the Official Code of Georgia Annotated, relating to furnishing of cancellation by grantee or holder upon payment, liability for failure to comply, cancellation of instrument after failure to comply, and liability of agents, so as to change certain provisions relating to the demand for liquidated damages; to provide for related matters; to provide for an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Code Section 44-14-3 of the Official Code of Georgia Annotated, relating to furnishing of cancellation by grantee or holder upon payment, liability for failure to comply, cancellation of instrument after failure to comply, and liability of agents, is amended by revising subsections (b) and (c) as follows:

"(b)(1) Whenever the indebtedness secured by any instrument is paid in full, the grantee or holder of the instrument, within 60 days of the date of the full payment, shall cause to be mailed to the grantor, at the grantor's last known address as shown on the records of the grantee or holder of the instrument, written notice of the grantee's or holder of the instrument's transmittal of notice of satisfaction or cancellation as required by this subsection and notice of the grantor's right to demand payment of \$500.00 in liquidated damages from the grantee or holder of the instrument if such obligation is not timely met.

(2) Whenever the indebtedness secured by any instrument is paid in full, the grantee or holder of the instrument, within 60 days of the date of the full payment, shall cause to be furnished to the clerk of the superior court of the county or counties in which the instrument is recorded a legally sufficient satisfaction or cancellation to authorize and direct the clerk or clerks to cancel the instrument of record. The grantee or holder of the instrument shall further direct the clerk of the court to transmit to the grantor the original cancellation or satisfaction document at the grantor's last known address as shown on the

records of the grantee or holder of the instrument. In the case of a revolving loan account, the debt shall be considered to be 'paid in full' only when the entire indebtedness including accrued finance charges has been paid and the lender or debtor has notified the other party to the agreement in writing that he or she wishes to terminate the agreement pursuant to its terms.

~~(2)~~(3) Notwithstanding paragraph ~~(1)~~ (2) of this subsection, if an attorney at law remits the pay-off balance of an instrument to a grantee or holder of the instrument on behalf of a grantor, the grantee or holder of the instrument may direct the clerk of the court to transmit to such attorney the original cancellation or satisfaction document.

~~(3)~~(4) A grantee or holder of the instrument shall be authorized to add to the pay-off amount the costs of recording a cancellation or satisfaction of an instrument.

~~(c)~~(1) Upon the failure of the grantee or holder of the instrument to transmit ~~properly~~ a legally sufficient satisfaction or cancellation as ~~provided in~~ required by subsection (b) of this Code section, the grantee or holder of the instrument shall, ~~upon written demand,~~ be liable to the grantor for the sum of \$500.00 as liquidated damages and, ~~in addition thereto,~~ for such additional sums for any loss caused to the grantor, plus reasonable attorney's fees if the grantor makes a written demand for liquidated damages to the grantee or holder of the instrument before transmittal, but not less than 61 days after the instrument is paid in full, and prior to filing a civil action.

(2) The grantee or holder of the instrument shall not be liable to the grantor if he or she demonstrates reasonable inability to comply with subsection (b) of this Code section; and the grantee or holder shall not be liable to the grantor unless and until a written demand for the liquidated damages as provided in subsection (b) of this Code section is made. No settlement agent or attorney may take an assignment of the right to the \$500.00 in liquidated damages.

(3) Except as provided in paragraph (1) of subsection (b) and paragraph (2) of subsection (c) of this Code section, ~~no~~ No other provision of this Code section shall be construed so as to affect the obligation of the grantee or holder of the instrument to pay the liquidated damages provided for in this subsection.

(4) At least 15 business days prior to filing a civil action to recover liquidated damages, the grantor shall provide notice in writing to the grantee or holder of the instrument at the address where the grantee or holder of the instrument directs payments to be mailed with respect to the indebtedness secured by the instrument or, if such address is not available, at the address of the grantee or holder of the instrument's registered agent for service of process in Georgia stating that the grantee or holder of the instrument:

(A) Has failed to comply with the obligation required by this Code section;

(B) Owes the grantor liquidated damages in the amount of \$500.00; and

1     (C) May be sued by the grantor for the failure to comply with the provisions of this  
2     Code section.

3     (5) If the grantee or holder of the instrument fails to provide written notice to the grantor  
4     regarding the grantee's or holder of the instrument's obligation for transmittal as provided  
5     in paragraph (1) of subsection (b) of this Code section, the grantor may file a civil action  
6     at any time more than 60 days after the grantee's or holder of the instrument's receipt of  
7     full payment."

8                                   **SECTION 2.**

9     This Act shall become effective upon its approval by the Governor or upon its becoming law  
10    without such approval. A demand for liquidated damages made before the effective date of  
11    this Act shall be governed by the provisions of former Code Section 44-14-3.

12                                  **SECTION 3.**

13    All laws and parts of laws in conflict with this Act are repealed.